

BEST AVAILABLE COPYREMARKS

This application, as amended herein, contains claims 1-8, 10-20, 36-46, 48-50 and newly added claims 51-54.

Upon further review of the final office action, no reason for the rejection of claims 40-43 was found. It is respectfully submitted that the Examiner must provide such reason, or indicate that claims 40-43 are allowable.

For the convenience of the Examiner, the Remarks in the Amendment received by the USPTO on June 24, 2004 are repeated herein with modifications and additions, as appropriate. This paper is submitted on the assumption that the Amendment received by the USPTO on June 24, 2004, which was refused entry under final rejection, has been entered upon the filing of the RCE. Claim status indicators have been updated accordingly.

Claims 4 and 10-12 were objected to because they recite a temperature sensitive material. The Examiner stated that claim 1 does not include this limitation. This is precisely why claims 4 and 10-12 are dependent claims and serve to further limit claim 1, which is directed to a display medium. The undersigned sees no reason why a temperature sensitive display medium may not include a temperature sensitive display material. Thus, it is respectfully submitted that there is no basis to object to claims 4 and 10-12. In fact, the Examiner has stated no statutory grounds for doing so. Thus, it is respectfully

submitted that the objection to claims 4 and 10-12 should be withdrawn.

Claim 13 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. This reject was simply not understood. However, it has been determined that because this application was filed electronically, the portions of the specification that the undersigned was referring to in the previous amendment were incorrect, as the undersigned was referring to a version of the specification with the same text, but with different pagination.

Thus, the Examiner is respectfully referred to page 7, paragraph 0043, and to the paragraph 0083 bridging pages 15 and 16 of the specification. There is ample teaching on having an image display process which is irreversible with a change of temperature. Indeed, original claim 13, which is part of the disclosure, so states. However, perhaps the Examiner is referring to the "at least one" language used in claim 13 as amended. To avoid any controversy on this point, claim 13 was amended to remove that language. Further, to exactly align the language of the claim with that found most frequently in the specification, the term "not reversible" has been replaced herein with the term "irreversible", although the meaning is intended to be exactly the same. This change should not be construed to be a narrowing amendment of claim 13, as no change in scope is intended.

Thus, it is respectfully submitted that there is no basis for rejecting claim 13, as amended herein, under 35 U.S.C. 112, and it is respectfully requested that the rejection be withdrawn.

Claims 49-50 were rejected because the Examiner has found insufficient antecedent basis for the limitation. This rejection is simply not understood, as there are various apparatus described in the specification, and the first and second recitations are merely used to distinguish two of those apparatus. However, to avoid controversy, this language has been removed from claims 49 and 50. Thus, in view of the clear teaching in the specification of apparatus for reading a symbol (such as, for example, a bar code scanner, clearly disclosed in the specification) and apparatus for processing the product (such as, for example, a microwave oven, also clearly disclosed in the specification) it is respectfully submitted that there is more than sufficient antecedent basis for claims 49-50, and it is respectfully requested that the rejection be withdrawn.

In view of an RCE having been filed, there is no longer any reason for failing to examine claims 49-50, as requiring a further search, as noted in the Advisory Action. It is respectfully requested that the examiner conduct such further search.

Claims 9 (the only claim specifying a background material) and claim 47 have been canceled.

Claims 1-3, 10, 12, 13, 18, 19, 20, 26, 47 and 48 were rejected under 35 U.S.C. 102(e) as being anticipated by Prusik et al. Further claims 1-2, and 4-15 were rejected under 35 U.S.C. 102(b) as anticipated by Matsunami et al. Claims 4-8 and 36-39 were rejected under 35 U.S.C. 103(a) as unpatentable over Prusik et al. in view of Dean. Claims 14-16 and 44-46 were rejected under 35 U.S.C. 103(a) as unpatentable over Prusik et al. in view of Cooley et al. Finally, claims 3 and 16-20 were rejected as unpatentable over Matsunami et al. in view of Cooley et al. These rejections are respectfully traversed.

Claim 1 recites a temperature sensitive display medium for displaying a first image within a first temperature range and a second image within a second temperature range, wherein at least one image provides information about a condition of a product to which the display medium is attached. The condition is indicative of how to further process the product. Applicant's invention, as set forth in claim 1, thus provides a specific technical advantage, in that the condition of the product, based on its thermal history, is determined, and thus further, appropriate processing of the product can take place.

The central issue herein is that the Examiner has failed to give any weight to the nature of the information displayed. Instead, the Examiner has cited case law for the proposition that very little weight is attached to an intended field of use of a product. It is respectfully submitted that this case law refers to a prior art structure, where the claim recites merely, as an example,

"for use in cooking". This case law is not pertinent to the issues presented herein.

The issue presented herein deals with a structure for displaying particular information, and the nature of the information displayed. Information displayed can and does define a different and unique structure. For example, it has been held that a digital computer programmed in a new and unobvious way is a physically different from the machine without the program, and is therefore patentable. *In re Bernhart*, 417 F.2nd 1395, 1400, 163 U.S.P.Q. 611 (CCPA 1969). The court said "The fact that these physical changes are invisible to the eye should not tempt us to conclude that the machine has not changed."

In the instant case, the changes are in fact visible to the eye. The information has real value, and defines a different product, specifically one that has information thereon on how that product is to be processed. This is very similar to the programming of a digital computer where what the program provides is information on what the machine is to do next, or in successive steps.

In view of the above, it is respectfully requested that the Examiner reconsider the position taken on all of the claims, giving due weight to the nature of the information presented, from the most general statement in claims 1 and 18, to the specific nature of this information in claims 36- 46 and 48. It is respectfully submitted that if due weight and consideration are given to the recitations of the nature of the information displayed in

these claims, the Examiner, under existing case law, must find the claims to be directed to patentable subject matter. These remarks pertain to the rejections of claims 1-3, 10, 12, 13, 18, 19 20, 36, 47 and 48 (based on Prusik et al.), the rejection of claims 1-2 and 4-15 (based on Matsunami et al.) and claims 3 and 16-20 (based on Matsunami et al. in view of Cooley et al.).

It is also respectfully submitted that claim 13 is patentable over the art of record. Claim 13 specifies one way in which the thermal history of a product to which the display medium is attached, may be determined. If the product has been exposed to a temperature that is inappropriate, as more fully discussed below, then the irreversible change in the display will provide an continuing indication of this having occurred, even if the temperature is again changed to one that would have been acceptable, had it been continuously maintained. The prior art does not teach or suggest this approach. For this reason, and for the reasons set forth above with respect to claim 1, from which claim 13 depends, it is submitted that claim 13 is patentable over the art of record.

Claim 18 was amended in a manner analogous to that of claim 1. For the reasons set forth above with respect to claim 1, and for the reasons set forth below, it is respectfully submitted that claim 18, and claims 19 and 20, which depend therefrom, are also directed to patentable subject matter.

With respect to the rejection of claims 3 and 16-20, as unpatentable over the combination of Matsunami et al. in view of Cooley et al., it is again respectfully submitted that Cooley et al. adds nothing of significance to Matsunami et al. Cooley et al is directed to a tampered-indicating and authenticating label. The thrust of Cooley et al. is to be certain that the label has not been tampered with or removed from an article to which it is attached. Cooley et al. does not teach or suggest a display medium as set forth in claim 1, from which claims 3 and 16-20 depend, because Cooley et al. is not concerned with further processing of the product. For the reasons set forth above with respect to claim 1, it is submitted that claims 3 and 16-20 are also patentable over the art of record.

Claims 36-50, which all depend either directly or indirectly from claim 1, present a number of features of Applicant's invention not shown or suggested in the art of record. It is noted that most of the features of Applicant's invention recited in these claims all take advantage of the unique property of the display medium having at least one image that is representative of the condition of the product, and thus indicative of what further processing is appropriate for the product. Thus, the symbol may be read, and the product may be efficiently processed in accordance with the condition represented by the symbol. For the reasons set forth above with respect to claim 1, and because of the specific recitation within each of the newly added claims, it is submitted that claims 36-50 are all directed to patentable subject matter.

Newly added claim 51 is directed to a temperature sensitive display medium for displaying a first image within a first temperature range and a second image within a second temperature range, wherein at least one image provides information about a thermal condition history of a product to which the display medium is attached. The condition is indicative of how to further process the product in view of the thermal history. The display medium also includes at least one of the images provides identification of the product.

Thus, as noted above with respect to claim 1, but as more explicitly recited in claim 51, the prior thermal history of a product to which the display medium is attached is provided by one of the images. This provides information on how to further process the product. This is absolutely critical, for example in the case of certain foods, where if the food was thawed, and then again frozen, it would no longer be edible, because someone eating the food could become very ill as a result. Instead of being consumed, the product could be safely discarded. Alternatively, the image could provide information on current temperature and thus information on how to precisely cook the product would be available.

In view of the above, and for the reasons set forth above with respect to claim 1, it is submitted that newly added claim 51 is patentable over the art of record.

Claim 52 depends from claim 51, and recites limitations similar to that of claim 13. For the reasons

set forth above with respect to claim 51 and claim 13, it is respectfully submitted that claim 52 is directed to patentable subject matter.

Newly added claim 53 is directed to a display medium comprising at least one image; and at least one identifier, wherein the at least one identifier is formed of a temperature sensitive material adapted to display the identifier within a first temperature range and to be indicative of a previous thermal condition. The identifier is representative of information on how to further process a product to which the display medium is attached based on the previous thermal condition. Thus, as noted above with respect to claim 51, the prior thermal history of a product to which the display medium is attached is provided by one of the images. This provides information on how to further process the product. As noted above, this is absolutely critical in the case of certain foods, where if the food was thawed, and then again frozen, it would no longer be edible, because someone eating the food could become very ill as a result. Instead of being consumed, the product could be safely discarded.

In view of the above, and for the reasons set forth above with respect to claim 1, it is respectfully submitted that claim 53 is also directed to patentable subject matter.

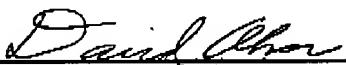
Claim 54 depends from claim 53 and states that at least one identifier undergoes a change which is irreversible when the display medium is within a

predetermined temperature range. For the reasons set forth with respect to claims 13 and 52, and for the reason set forth with respect to claim 53, it is respectfully submitted that claim 55 is directed to patentable subject matter.

Reconsideration and allowance of this application are respectfully requested. In view of the allowable nature of the subject matter of all of the claims, if the Examiner cannot issue an immediate allowance, it is respectfully requested that the Examiner contact the undersigned to resolve any remaining issues.

Please charge deposit account no. 50-0510 in the amount of \$36 for the presentation of two additional dependent claims above the amount paid for previously. A duplicate of this last page is enclosed.

Respectfully submitted,



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Date

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predetermined temperature range. For the reasons set forth with respect to claims 13 and 52, and for the reason set forth with respect to claim 53, it is respectfully submitted that claim 55 is directed to patentable subject matter.

Reconsideration and allowance of this application are respectfully requested. In view of the allowable nature of the subject matter of all of the claims, if the Examiner cannot issue an immediate allowance, it is respectfully requested that the Examiner contact the undersigned to resolve any remaining issues.

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